

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
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VIA ECF (WITH ACCOMPANYING LIST FILED UNDER SEAL)

December 6, 2019

The Honorable Sarah Netburn
Thurgood Marshall United States Courthouse
40 Foley Square, Room 430
New York, NY 10007

RE: *In Re: Terrorist Attacks on September 11, 2001, 03 MDL 1570 (GBD) (SN)*
FBI Protective Order

Dear Judge Netburn:

This letter is filed in accordance with the Court's November 20, 2019 Order, ECF # 5297. Along with this letter, Plaintiffs are filing under seal their preliminary deposition list with a statement of the scope of information that Plaintiffs intend to elicit from each witness. We do not attempt to describe every issue, transaction, and area of knowledge that may be explored in the depositions. We endeavored to capture the key areas as to which we currently anticipate that witness has knowledge. In addition, as Plaintiffs previously stated, we have not identified the names of 35 non-party witnesses, because of fears expressed by several of those witnesses due to their genuine personal safety concerns about providing testimony in a case involving the Kingdom of Saudi Arabia. Plaintiffs will share the names of third party witnesses at an appropriate time once suitable protections are in place for the witnesses and certainly give the Defendant ample notice of any scheduled deposition.

Plaintiffs are not proposing that they need the depositions of all of the persons on their list. Rather, the list presents the pool of witnesses that Plaintiffs have identified at this time from which we will select deponents. The need to depose certain witnesses will hinge on the testimony of other witnesses as well as the outcome of further document production and other investigation. It is also possible that alternative discovery processes, such as requests for admission, could serve to limit the scope or obviate the need for certain depositions that may otherwise be required to qualify evidence or prove prior statements.

Most importantly, we do not here address the merits of the key issue on the suitable number of depositions based on the applicable Rule 26(b)(2) factors that govern such that determination. This Court's November 20 Order did not request or authorize the parties to submit briefs on that issue. That analysis would implicate considerations relating to the unavailability of relevant evidence from other sources, the propensity of the key Saudi government officials to lie about the precise matters at issue in the present inquiry, inconsistencies in the accounts provided by certain witnesses and available records, the likely reluctance of certain witnesses to be forthcoming given the potential criminal exposure they may face as a result of their involvement in the support network for the hijackers, and the potential that certain witnesses may invoke the Fifth Amendment rather than answering plaintiffs' questions, along with other factors. Before the Court makes any determination concerning the number of depositions to be permitted, the PECs respectfully request the opportunity to submit a letter brief on those issues and that the Court hear oral argument, given the singular importance of depositions to the evidence gathering process authorized by the Court's March 28, 2018 Opinion.

Respectfully submitted,

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*On behalf of the MDL 1570 Plaintiffs' Exec.
Committee for Personal Injury and Death
Claims*

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*On behalf of the MDL 1570 Plaintiffs' Exec.
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cc: The Honorable George B. Daniels

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*On behalf of the MDL 1570 Plaintiffs' Exec.
Committee for Personal Injury and Death
Claims*